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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,418	04/21/2000	Bernard Trevor Matthews	FJC-102US	6763
7590 10/31/2003				
Joshua L. Cohen Ratner & Prestia Suite 301 One Westlakes Berwyn PO Box 980 Valley Forge, PA 19482-0980				
EXAMINER CORBIN, ARTHUR L.				
ART UNIT 1761		PAPER NUMBER		

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/537,418	Applicant(s) MATTHEWS ET AL
Examiner ARTHUR L. COBBIN	Group Art Unit 1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 7-7-03, 8-20-03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-5, 7-24, 26, 28-32, 34-47 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-5, 7, 10-24, 26, 28, 31, 32, 34-47 is/are rejected.
- ☒ Claim(s) 8, 9, 29, 30 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 8-20-03
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, 10-24, 26, 28, 31, 32 and 34-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minoru et al in view of Swartz.

Applicant is referred to the reasoning set forth in paragraph No. 3, Paper No. 19.

3. Claims 8, 9, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Applicant's arguments filed July 7, 2003 have been fully considered but they are not persuasive. Whereas Minoru et al may teach away from including more than 10% fermented dairy product, as applicant maintains, a level of 10% dairy product is contemplated by Minoru et al, which level would avoid the strong smell undesired by Minoru et al.

Although Minoru et al is silent about the sausage product pH, as applicant contends, Minoru et al obviously attains a pH as claimed by applicant since the 10% fermented dairy product used by Minoru et al is within applicant's claimed range.

Applicant's contention, that Minoru et al does not address applicant's problem of reduced water-retaining capacity since Minoru et al's product is not cooked, is not

convincing since it would have been obvious to cook any sausage product, such as disclosed by Minoru et al.


Since Swartz seeks to alter the taste of a sausage product by including yogurt therein it would have been obvious to combine the two references if an improvement in taste is desired. These two references are analogous and properly combinable, despite applicant's belief to the contrary, since Minoru et al does not seek to avoid the taste of fermented milk in his sausage product but rather only strong smell of fermented milk, a property not disclosed as being sought by Swartz.

5. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
October 23, 2003


ARTHUR L. CORBIN
PRIMARY EXAMINER
10-29-03